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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

TODD FREALY, as Trustee in
Bankruptcy, etc.,

Plaintiff,

v.

ROBERT KANTER, as Acting
Administrator, etc., et al.,

Defendants, Cross-defendants
and Appellants;

RONEN ARMONY et al.,

Defendants, Cross-complainants
and Respondents.

B316413

(Los Angeles County
Super. Ct. No. BC639782)

APPEAL from an order of the Superior Court of Los Angeles County. Teresa A. Beaudet, Judge. Affirmed.

Joens & Joens, Timothy L. Joens and Matthew L. Joens for Defendants, Cross-defendants and Appellants.

Mashian Law Group, Bryan Mashian and Laura Stanton for Defendants, Cross-complainants and Respondents.

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The sole issue on appeal is whether the trial court erred in awarding contractual attorney fees to respondents. Appellants do not contest the reasonableness of the amount of fees awarded. Rather, appellants say that respondents were not entitled to any fees at all because they failed to first mediate the dispute which was required by the contract upon which the fee award was based. Respondents argue the fee award was proper because the prelitigation mediation requirement applies only to parties that initiate litigation and this interpleader action was initiated by a third party and not respondents; and, in any event, they did attempt mediation with appellants to no avail.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties to this appeal are the defendants in this interpleader action, all of whom are owner members in a limited liability company. Appellants are Gary Kanter, individually and as the successor trustee of the Ramsey Irrevocable Trust No. I and the Ramsey Irrevocable Trust No. II, and Robert Kanter in his capacity as acting administrator of the estate of Ben Kanter (hereafter appellants); and respondents are Ronen Armony, Ori Harpaz and Dotan Shoham (hereafter respondents).

Sometime in 2010, a dispute arose between appellants and respondents regarding their respective ownership interests in a limited liability company which held title to two properties in Banning, California. The parties engaged in mediation efforts in late 2010 and early 2011 regarding various business interests, including this limited liability company. The parties executed a mediation agreement. Further disputes arose regarding performance due under the mediation agreement.

In July 2014, the limited liability company (hereafter debtor) filed a voluntary petition for bankruptcy (case No. 6:14-bk-19644-SC). Plaintiff Todd Frealy was appointed the Chapter 7 bankruptcy trustee for debtor, in which capacity he filed this interpleader action. Plaintiff is not a party to this appeal.

In 2015, appellants filed an adversary proceeding against respondents in the pending bankruptcy proceeding.

Pursuant to an order of the bankruptcy court, plaintiff sold debtor's assets. After distributing the proceeds, surplus proceeds in the amount of \$1,919,091.27 remained in the debtor's estate.

The bankruptcy court dismissed appellants' adversary proceeding and granted plaintiff's motion to interplead the surplus funds in an action to be initiated by plaintiff in a superior court with appropriate venue.

In February 2016, respondents sought a stipulation from appellants that the surplus funds could be placed in an escrow account, instead of interplead with the court, and the parties would mediate before Daniel Ben-Zvi of Alternative Dispute Resolution services. The form of the stipulation was agreed to and circulated for signature but appellants delayed, and ultimately refused to sign. The mediation never proceeded and respondents paid \$2,640 in cancellation fees.

Plaintiff as the Chapter 7 bankruptcy trustee for debtor filed this interpleader action in November 2016. Respondents filed a cross-complaint asserting rights to 100 percent of the interplead funds due to various alleged breaches by appellants.

After a bench trial, the court found in favor of respondents, ordering that 100 percent of the interplead funds be distributed

to respondents as follows: 83.8 percent to Ronen Armony, 10.6 percent to Ori Harpaz, and 5.6 percent to Dotan Shoham.

Respondents filed a cost memorandum and a motion for attorney fees pursuant to paragraph 10.3 of debtor's operating agreement. Paragraph 10.3 provides: "In any action, proceeding, or arbitration between the parties to this Agreement arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, except as provided in the foregoing."

The foregoing paragraphs 10.1 and 10.2 provide in relevant part: "[a]ny action to enforce or interpret this Agreement or to resolve disputes between the Member(s) or by or against any Member shall be settled by arbitration in accordance with the rules of the American Arbitration Association." And, that "[i]f any party *commences an action* based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action." (Italics added.)

Appellants opposed the request for fees arguing that respondents failed to comply with the prelitigation mediation requirement set forth in paragraph 10.2.

After a contested hearing, the court issued a written order granting in part respondents' motion for attorney fees. The court rejected appellants' mediation argument, finding that "the [respondents] did not commence the instant action." The court awarded respondents fees in the amount of \$527,639.99.

Judgment was entered on October 20, 2021. This appeal followed. By order dated November 2, 2022, we granted respondents' motion to augment the appellate record with

additional documents from the trial court record, including the complaint in interpleader.

DISCUSSION

Appellants contend the trial court should have denied respondents' fee motion in its entirety because respondents failed to comply with the prelitigation mediation requirement set forth in paragraph 10.2 of debtor's operating agreement. We do not agree.

Where "the facts are not in dispute and the right to the recovery of fees depends upon the interpretation of a contract and no extrinsic evidence is offered to interpret the contract, we review the ruling de novo." (*San Francisco CDC LLC v. Webcor Construction L.P.* (2021) 62 Cal.App.5th 266, 285; *Reyes v. Beneficial State Bank* (2022) 76 Cal.App.5th 596, 604 [the legal basis upon which a fee award is based is a question of law to be reviewed de novo].)

The language of paragraph 10.2 is clear and unequivocal and requires a party to the contract to attempt mediation of the dispute before it *commences* any action. It is undisputed this action was commenced by the bankruptcy trustee and *not* by respondents. Nothing in the contractual language required respondents to initiate or pursue mediation efforts with appellants after the interpleader action was commenced by a third party. (*San Francisco CDC LLC v. Webcor Construction L.P.*, *supra*, 62 Cal.App.5th at pp. 285-286 [" "the mutual intention of the parties at the time the contract is formed governs interpretation . . . intent is to be inferred, if possible, solely from the written provisions of the contract" '"].)

In any event, even though the provision did not apply, respondents attempted to mediate with appellants before the

interpleader was filed. It was appellants who refused to sign the mediation stipulation in February 2016. Respondents were entitled to a prevailing party fee award.

DISPOSITION

The order awarding attorney fees to defendants, cross-complainants and respondents Ronen Armony, Ori Harpaz and Dotan Shoham is affirmed. Respondents shall recover their costs of appeal.

GRIMES, J.

WE CONCUR:

STRATTON, P. J.

WILEY, J.